

REMARKS

Applicant would like to thank the Examiner for the courtesy extended to Applicant's representatives during the interview on May 6, 2004. The following reflects issues discussed during the interview.

Claims 41, 43, and 61-121 have been cancelled without prejudice or disclaimer.

Claim 1 has been amended to incorporate subject matter previously recited in claims 41 and 43. Claims 42 and 44 have been amended merely to change their dependency. Accordingly, these amendments do not raise any new issues and should be entered at least for purposes of appeal.

Claims 1-40, 42, 44-60, and 122-136 are currently pending in this application. Of the pending claims, claims 27, 32-36, and 38-40 were withdrawn from consideration as a result of the Response to Election of Species Requirement filed July 2, 2003. Since Applicant believes that each of the independent claims from which the withdrawn claims depend is allowable, as will be explained below, Applicant requests that the withdrawn claims be rejoined and allowed.

In the Office Action, claims 1-21, 24, 25, 30, 41-45, and 58-60 were rejected under 35 U.S.C. § 102(b) as being anticipated by French Patent No. 782,500 to Pouly, and claims 22, 23, 26, 28, 29, 37, 46-57, 61-87, 89-92, 98, and 102-136 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pouly in view of U.S. Patent No. 5,904,151 to Gueret.¹ Of these rejected claims, claims 1, 61, 122, and 130 are independent.

¹ Applicant notes that at page 4, item no. 6 of the Office Action, the Examiner again lists claims 102-10 as being rejected under 35 U.S.C. §103(a) over Pouly in view of Gueret. Applicant assumes that this was a typographical error and that the Examiner intended to list claims 102-105.

Also in the Office Action, claims 1-4, 6-16, 19-26, 28-31, 41, 45, 58-64, 66-87, 89-92, 102, and 118-121 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,962,743 to Henriksson, and claims 37 and 98 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Henriksson in view of U.S. Patent No. 2,361,407 to McNair.

Turning first to the claim rejections based on Henriksson, claim 1 has been amended to positively recite that “the applicator assembly further comprises the product, . . . wherein the product is intended for application to one of hair, skin, a fingernail, and a toenail.” As discussed during the interview and acknowledged by the Examiner, these changes obviate the rejections based on Henriksson, since Henriksson teaches an applicator for a shoe cream and not a product intended to be applied to hair, skin, a fingernail, or a toenail. Accordingly, the claim rejections based on Henriksson should be withdrawn.

With regard to the rejection of claim 1 based on the Pouly reference, Pouly does not disclose or otherwise suggest an applicator assembly comprising, *inter alia*, a holder “configured such that the holder has a substantially fixed axial position with respect to at least a portion of the application member when the holder is mounted relative to the application member.”

As discussed in the interview, the specification of the present application includes the following at paragraph 8,

French Pat. No. 782 500 [Pouly] discloses a shaving brush comprising a foam ring surrounding an end of a bar of soap held by a structure that is configured to move in an axial direction relative to the foam ring. . . . Neither the structure nor the soap have a substantially fixed axial position when the structure is mounted with respect to the foam ring.

and the following at paragraph 14,

The "substantially fixed axial position" of the holder means that the holder, once mounted with respect to the application member, is not capable of moving in an axial direction relative to at least a portion of the application member. In other words, while the application member may move relative to the holder, for example via compression and/or expansion of the application member, the holder is fixed from moving axially relative to at least a portion of the application member. A holder having a "substantially fixed axial position" also includes a holder holding product and mounted with respect to the application member such that, in the absence of force, such as force exerted axially on the application member, the free surface of the product held by the holder can only be located below or substantially at the level of the application surface, substantially irrespective of the degree of mounting engagement of the holder with respect to the application member. In contrast, FR 782 500 does not have a product holder substantially axially fixed with respect to the foam ring because, for example in Fig. 3 of FR 782 500, the free surface of the product projects through the opening in the free end of the foam ring at least when there is a complete engagement between the threaded members.

(emphasis added).

Hence the specification defines "substantially fixed axial position" to an extent that clearly indicates the subject matter of Pouly does not have a "substantially fixed axial position." In accordance with the Examiner's agreement with this position during the interview, the rejection of claim 1 based on Pouly should be withdrawn.

Regarding the rejection of independent claim 61 based on Pouly, in view of Gueret, claim 61 has been canceled. Accordingly, the rejection of claim 61 should be withdrawn.

Regarding independent claims 122 and 130, the rejection of those claims based on Pouly in view of Gueret should be withdrawn because those references fail to disclose each and every element of the claims. At page 5 of the Office Action, the Examiner acknowledges that Pouly does not disclose an applicator system

“comprising a plurality of application members and holders.” To cure these noted deficiencies of Pouly, the Examiner relies on Gueret.

Applicant respectfully submits that the rejection of claims 122 and 130 should be withdrawn. In the exemplary embodiment of Fig. 12, Gueret discloses an application unit 10 having a single handle 21 associated with a plurality of applicators 1, 1', 1", each having a different product P, P', P". Gueret teaches products such as “blusher, eye-shadow, cheek rouge, lipstick, [and] foundation cream[.]” Col. 1, l. 8-10. These are products that are conventionally presented in different colors, types, etc., and thus, there is sometimes a desire to have the ability to be able to use more than one product and/or applicator. By contrast, one of ordinary skill in the art would not have had any interest in having the ability to have multiple products and/or multiple applicators for the shaving soap of Pouly. Therefore, one would not have been motivated to provide the device of Pouly with subject matter of Gueret.

Furthermore, even if there would have been some reason to incorporate the teachings of Gueret, the subject matter of claims 122 and 130 would not be the result. In particular, there is no disclosure or suggestion of the subject matter of claim 122, including “a plurality of application members” and “at least one holder configured to hold the product and to be removably mounted relative to each of the application members,” or the subject matter of claim 130, including “at least one application member” and “a plurality of holders configured to hold the product and to be removably mounted relative to the at least one application member.” For at least these reasons discussed during the interview and acknowledged by the Examiner, the rejection of claims 122 and 130, and their respective dependent claims, based on Pouly in view of Gueret should be withdrawn.

Claims 2-40, 42, 44-60, 123-129, and 131-136 each depend from one of claims 1, 122, and 130, and therefore those claims are allowable for at least the same reasons their corresponding independent claims are allowable. In addition, at least some of the dependent claims recite unique features and/or combinations that distinguish them from the cited art and therefore at least some of those dependent claims are also separately patentable.

Applicant requests the entry of the present amendment, the withdrawal of the outstanding claim rejections, the rejoinder of withdrawn claims 27, 32-36, and 38-40, and the allowance of pending claims 1-40, 42, 44-60, and 122-136.

The Office Action contains various characterizations and assertions regarding Applicant's claims and the cited art with which Applicant does not necessarily agree. To the extent Applicant has not specifically addressed any of those characterizations and assertions, Applicant declines to subscribe to the same.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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